

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH M. BURNS and DEPARTMENT OF THE ARMY,
U.S. ARMY MATERIAL COMMAND, Tooele, UT

*Docket No. 99-0106; Submitted on the Record;
Issued August 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant had any disability or residuals causally related to her August 30, 1990 or September 4, 1991 accepted lumbar muscular strain injuries, after September 12, 1998, the date the Office of Workers' Compensation Programs terminated her compensation entitlement;¹ and (2) whether the Office abused its discretion in denying appellant's request for further review of the case on its merits under 5 U.S.C. § 8128.

The Office accepted that on August 30, 1990 and again on September 4, 1991 appellant, then a 43-year-old temporary laborer, sustained lumbar strain. Appellant stopped work on August 30, 1990, returned on August 8, 1991 sustained injury again on September 4, 1991 and returned on September 24, 1991. Appellant worked until October 24, 1991, when she again stopped work and remained on the periodic roll and underwent vocational rehabilitation until February 25, 1994 when she returned to full-time employment as a home health aide.² She stopped work again on April 5, 1994, stating that she could not perform the lifting and bending required in this work and did not return.

By report dated March 16, 1993, Dr. Thomas D. Noonan, a second opinion Board-certified orthopedic surgeon, noted that lumbar spinal x-rays demonstrated vertebral bodies of normal height and configuration with some narrowing of the lumbosacral disc space, but without evidence of spondylolysis or spondylolisthesis. He noted a reduced range of spinal motion, tenderness and a "trace of paraspinous muscle spasm and limitation of motion of the lumbar spine." Dr. Noonan noted the radiographic evidence of the lumbosacral disc space and opined that this developmental condition might be the basis for appellant's continued symptomatology

¹ In a prior appeal before the Board, Docket No. 95-2221, issued September 5, 1997, the Board affirmed that appellant received an overpayment of \$599.01, that she was not entitled to waiver, and that the overpayment would be collected by withholding \$50.00 per month from her continuing compensation.

² Appellant was certified as a medical assistant and as an emergency medical technician.

rather than the actual strain injury sustained. He completed a work restriction evaluation indicating that appellant could work eight hours per day with bending, stooping and twisting restrictions.

On December 20, 1993 appellant's treating physician, Dr. Lyle A. Jacobs, a Board-certified orthopedist, indicated that appellant could return to work for eight hours a day within specific activity restrictions.

Appellant returned to work as a home health aide on February 25, 1994 but stopped work on April 5, 1994. By report dated April 4, 1994, Dr. Jacobs opined that many of appellant's home health care activities were very irritating to her back. He opined that appellant would function best where she could sit, stand, move around and change positions and not have to do a lot of lifting or bending during the course of an average day. Dr. Jacobs opined that appellant would not be able to keep up with her home health aide job and needed to consider something more sedentary. By report dated December 19, 1994, Dr. Jacobs completed appellant's work restriction evaluation indicating that she could work eight hours per day depending upon the job, with no sitting or climbing over four hours, no lifting or squatting over three hours, no kneeling or twisting over two hours, but without any restriction on standing or walking. He opined that he would see appellant on an annual basis.

No further medical evidence was submitted to the record from 1995 to 1997 and on January 20, 1998 the Office referred appellant, together with a statement of accepted facts, questions to be answered and the relevant case record to Dr. Jeffrey M. Hrutkay, a Board-certified orthopedic surgeon, for another second opinion evaluation.

By report dated April 29, 1998, Dr. Hrutkay noted that a lumbar computerized tomography scan revealed a disc bulge at L5-S1 without nerve root impingement. He reported that there was no palpable lumbar muscle spasm and no discrete trigger points and that back range of motion was full and normal. Dr. Hrutkay noted appellant's ability to stand on her heels and toes, and to do deep knee bends and he reported, that straight leg raising was to 90 degrees without difficulty bilaterally. Dr. Hrutkay indicated that muscle testing was normal, that there was no atrophy in the lower extremities, and that there were no current objective findings of active and disabling residuals of the lumbar spine. He reported no objective neurologic findings in the lower extremities, but noted that there was evidence of degenerative disc disease at L5-S1 which preexisted the August 30, 1990 motor vehicle accident and which was likely the cause of her symptoms. Dr. Hrutkay noted that appellant's soft tissue muscular strain injuries would have resolved within a period of six months, and he opined that appellant was not disabled from her job as a laborer as a result of her 1990 and 1991 muscular strain injuries, but that appellant's subjective complaints were as a result of preexisting spinal degenerative problems. Dr. Hrutkay completed a work restriction evaluation indicating that appellant could work 8 hours per day, avoiding twisting and with lifting, pushing and pulling no more than 30 pounds for 8 hours per day. He indicated that these work restrictions were not due to the work injury, but were due to appellant's other medical problems, noted as degenerative disc disease at L5-S1.

On July 23, 1998 the Office issued appellant a notice of proposed termination of compensation, finding that the weight of the medical evidence of record supported that appellant had no further disability or injury residuals causally related to her accepted 1990 and 1991

employment injuries. The Office advised that Dr. Hrutkay's opinion constituted the weight of the medical opinion evidence and supported that she had no further disability or residuals.

By letter faxed to the Office on August 25, 1998 appellant objected to the termination of compensation arguing that she still had a lot of pain, tingling and numbness in her lower back.

By decision dated August 25, 1998, the Office finalized the termination of appellant's compensation entitlement effective September 12, 1998, finding that the record contained no objective evidence of any condition or residuals resulting from her employment injuries.

By letter dated October 23, 1998, appellant requested reconsideration, restating that she still had pain, tingling and numbness occurring in her back.

By decision dated October 28, 1998, the Office denied appellant's request for further review of her case on its merits finding that she did not submit new and relevant evidence nor made new legal arguments.

The Board finds that appellant had no disability or residuals causally related to her August 30, 1990 or September 4, 1991 accepted lumbar muscular strain injuries after September 12, 1998, the date the Office terminated her compensation entitlement.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶ The Office met its burden of proof to terminate both entitlement to compensation and entitlement to medical benefits, with the well-rationalized medical report of Dr. Hrutkay.

Dr. Hrutkay was provided with a statement of accepted facts, questions to be answered and the relevant case record. He reviewed the record and appellant's factual and medical history and conducted a complete and thorough physical examination of appellant. In a well-rationalized report based upon all the above-mentioned evidence, Dr. Hrutkay clearly answered the Office's questions, findings, and concluded from his examination and records evaluation, that

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁶ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

appellant had no disability or injury residuals causally related to her 1990 or 1991 employment soft tissue muscle strain injuries.

The Board has explained that factors which enter into the evaluation of the weight of the medical evidence are the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷ In this case, Dr. Hrutkay's thorough and well-rationalized report is the weight of the medical evidence.

As there is no current medical evidence of record that supports appellant's claims of continuing disability or injury residuals and as the most recent medical evidence appellant submitted to the record was the 1994 report from Dr. Jacobs which indicated that appellant could return to work, the thorough and well-rationalized report from Dr. Hrutkay finding no disability or injury residuals constitutes the weight of the medical opinion evidence on this issue.

Therefore, the Office met its burden of proof to terminate appellant's monetary compensation and medical benefits entitlement.

Accordingly, the decision of the Office of Workers' Compensation Programs dated August 25, 1998 is hereby affirmed.

Dated, Washington, D.C.
August 2, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Adrienne L. Wintrip*, 38 ECAB 373 (1987); *Naomi A. Lilly*, 10 ECAB 560 (1959).